



Billing Code 4910-13-P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 91

[Docket No. FAA-2017-0768; Amendment No. 91-?]

RIN 2120-AL07

Prohibition Against Certain Flights in the Damascus (OSTT) Flight Information Region (FIR)

AGENCY: Federal Aviation Administration (FAA), Department of Transportation (DOT).

ACTION: Final rule.

SUMMARY: This action reissues a prohibition of certain flight operations in the Damascus (OSTT) Flight Information Region (FIR) by all U.S. air carriers; U.S. commercial operators; persons exercising the privileges of an airman certificate issued by the FAA, except such persons operating a U.S.-registered aircraft for a foreign air carrier; and operators of U.S.-registered civil aircraft, except where the operator is a foreign air carrier. The FAA finds that this action is necessary to safeguard against continuing hazards to persons and aircraft engaged in such flight operations.

DATES: This final rule is effective on August 28, 2017.

FOR FURTHER INFORMATION CONTACT: Michael Filippell or Will Gonzalez, Air Transportation Division, AFS-220, Flight Standards Service, Federal Aviation Administration, 800 Independence Avenue, SW, Washington, D.C. 20591; telephone: 202-267-8166; e-mail: michael.e.filippell@faa.gov or will.gonzalez@faa.gov.

SUPPLEMENTARY INFORMATION:

I. Executive Summary

This action prohibits certain flight operations in the Damascus (OSTT) Flight Information Region by all U.S. air carriers; U.S. commercial operators; persons exercising the privileges of an airman certificate issued by the FAA, except such persons operating a U.S.-registered aircraft for a foreign air carrier; and operators of U.S.-registered civil aircraft, except where the operator is a foreign air carrier. The FAA finds this action necessary to safeguard against continuing hazards to persons and aircraft engaged in such flight operations.

Special Federal Aviation Regulation No. 114, 14 CFR 91.1609, (SFAR 114) was first published on December 30, 2014 (79 FR 78299). Although an extension of SFAR No. 114, 14 CFR 91.1609, was published on December 27, 2016, (81 FR 94958), the prohibition itself was inadvertently removed from the Code of Federal Regulations due to incorrect amendatory instructions regarding dates in the original SFAR No. 114, 14 CFR 91.1609. On January 4, 2017, the FAA issued Notice to Airmen (NOTAM) KICZ A0001/17 to continue the prohibition of certain flight operations in the Damascus (OSTT) FIR due to the continuing hazards to U.S. civil aviation operations therein.

The FAA issued this NOTAM pursuant to the Administrator's authorities under 49 U.S.C. 40113(a) and 46105(c). Section 40113(a) authorizes the Administrator, with respect to aviation safety duties and powers designated to be carried out by the Administrator, to take action the Administrator considers necessary to carry out Part A (Air Commerce and Safety) of Subtitle VII (Aviation Programs) of title 49, U.S. Code, including conducting investigations, prescribing regulations, standards, and procedures, and issuing orders. Section 46105(c) provides

that, when the Administrator is of the opinion that an emergency exists related to safety in air commerce and requires immediate action, the Administrator, on the initiative of the Administrator or on complaint, may prescribe regulations and issue orders immediately to meet the emergency, with or without notice and without regard to Part A (Air Commerce and Safety) of Subtitle VII (Aviation Programs) of title 49, U.S. Code, and subchapter II of chapter 5 of title 5. The Administrator must begin a proceeding immediately about an emergency under section 46105(c) and give preference, when practicable, to the proceeding.

This rule reissues SFAR No. 114, 14 CFR 91.1609, in its entirety, and extends the rule's expiration date until December 30, 2018, with an effective date of [INSERT DATE OF FILING FOR PUBLIC INSPECTION AT THE OFFICE OF THE FEDERAL REGISTER].

II. Legal Authority and Good Cause

A. Authority for this Rulemaking

The FAA is responsible for the safety of flight in the United States and for the safety of U.S. civil operators, U.S.-registered civil aircraft, and U.S.-certificated airmen throughout the world. The FAA's authority to issue rules on aviation safety is found in title 49 of the U.S. Code. Subtitle I, sections 106(f) and (g), describe the authority of the FAA Administrator. Subtitle VII of title 49, Aviation Programs, describes in more detail the scope of the agency's authority. Section 40101(d)(1) provides that the Administrator shall consider in the public interest, among other matters, assigning, maintaining, and enhancing safety and security as the highest priorities in air commerce. Section 40105(b)(1)(A) requires the Administrator to exercise his authority consistently with the obligations of the U.S. Government under international agreements.

This SFAR is promulgated under the authority described in Title 49, Subtitle VII, Part A, Subpart III, section 44701, General requirements. Under that section, the FAA is charged broadly with promoting safe flight of civil aircraft in air commerce by prescribing, among other things, regulations and minimum standards for practices, methods, and procedures that the Administrator finds necessary for safety in air commerce and national security. This regulation is within the scope of that authority because it prohibits certain flight operations in the Damascus (OSTT) FIR due to the hazards to persons and aircraft engaged in such flight operations that are described in the Background section of this final rule.

The FAA also finds that this action is fully consistent with the obligations under 49 U.S.C. 40105(b)(1)(A) to ensure that the Administrator exercises his duties consistently with the obligations of the United States under international agreements.

B. Good Cause for Immediate Adoption

Section 553(b)(3)(B) of title 5, U.S. Code, authorizes agencies to dispense with notice and comment procedures for rules when the agency for “good cause” finds that those procedures are “impracticable, unnecessary, or contrary to the public interest.” Because the continuing hazards to U.S. operators and airmen described in the Background section of this rule warrant an immediate reissuance of the flight restrictions imposed by SFAR No. 114, 14 CFR 91.1609, the FAA finds that notice and public comment under 5 U.S.C. 553(b)(3)(B), as well as any delay in the effective date of this rule, are impracticable and contrary to the public interest.

III. Background

The significant threat to U.S. civil aviation operating in the Damascus (OSTT) FIR, identified when the FAA first published SFAR No. 114, 14 CFR 91.1609,¹ continues due to the presence of anti-aircraft weapons controlled by non-state actors, threats made by extremist groups, de-confliction concerns, and ongoing military fighting. Flight safety risks associated with de-confliction between various military forces conducting operations in Syria and civil aviation, which were identified as a concern in the original prohibition, continue.

There are multiple extremist groups, known to be equipped with a variety of anti-aircraft weapons, including radar-guided surface-to-air missiles (SAMs) and man-portable air defense systems (MANPADs), which have the capability to threaten civil aircraft. Syrian and Russian military aircraft have been shot down during the course of the current conflict, and extremist groups have previously warned civilian air carriers against operating within (or providing service to) Syria. In 2015 and in support of the Assad regime, Russia began conducting military operations using fighter and bomber aircraft and employed advanced cruise missiles against targets in Syria. These operations further increase the risk to civil flight operations in the Damascus (OSTT) FIR. Due to the presence of various military forces and non-state actors operating in Syria, the FAA has determined that safety of flight continues to be a serious concern for U.S. civil aviation flight operations in the Damascus (OSTT) FIR.

The FAA continues to assess the situation in the Damascus (OSTT) FIR and believes there is a significant threat to U.S. civil aviation operating in the Damascus (OSTT) FIR at all altitudes due to the presence of anti-aircraft weapons controlled by non-state actors, threats made

¹ 79 FR 78299, December 30, 2014.

by extremist groups, de-confliction concerns, and ongoing military fighting. Although an extension of SFAR No. 114, 14 CFR 91.1609, was published on December 27, 2016, (81 FR 94958), the prohibition itself was inadvertently removed from the Code of Federal Regulations due to incorrect amendatory instructions regarding dates in the original SFAR No. 114, 14 CFR 91.1609. On January 4, 2017, the FAA issued Notice to Airmen (NOTAM) KICZ A0001/17 to continue the prohibition of certain flight operations in the Damascus (OSTT) FIR due to the continuing hazards to U.S. civil aviation operations therein. As previously described, the FAA issued this NOTAM pursuant to the Administrator's authorities under 49 U.S.C. 40113(a) and 46105(c).

Due to the continuation of the previously described hazards to U.S. civil aviation operations, the FAA is reissuing SFAR No. 114, 14 CFR 91.1609, to maintain the prohibition on flight operations in the Damascus (OSTT) FIR by all U.S. air carriers; U.S. commercial operators; persons exercising the privileges of an airman certificate issued by the FAA, except such persons operating a U.S.-registered aircraft for a foreign air carrier; and operators of U.S.-registered civil aircraft, except where the operator is a foreign air carrier. The FAA is also extending the expiration date of the SFAR until December 30, 2018.

The FAA will continue to actively monitor the situation and, based on evaluations, determine the extent to which U.S. civil operators may be able to safely operate in the Damascus (OSTT) FIR in the future. Amendments to this SFAR No. 114, 14 CFR 91.1609, may be appropriate if the risk to aviation safety and security changes. Thus, the FAA may amend or rescind this SFAR No. 114, 14 CFR 91.1609, as necessary, prior to its expiration date.

IV. Approval Process Based on a Request From a Department, Agency, or Instrumentality of the United States Government

If a department, agency, or instrumentality of the U.S. Government determines that it has a critical need to engage any person covered under SFAR No. 114, 14 CFR 91.1609, including a U.S. air carrier or a U.S. commercial operator, to conduct a charter to transport civilian or military passengers or cargo or other operations in the Damascus (OSTT) FIR, that department, agency, or instrumentality may request that the FAA approve persons covered under SFAR No. 114, 14 CFR 91.1609, to conduct such operations. An approval request must be made directly by the requesting department, agency or instrumentality of the U.S. Government to the FAA's Associate Administrator for Aviation Safety (AVS-1) in a letter signed by an appropriate senior official of the requesting department, agency, or instrumentality. Requests for approval submitted to the FAA by anyone other than the requesting department, agency, or instrumentality will not be accepted and will not be processed. In addition, the senior official signing the letter requesting FAA approval on behalf of the requesting department, agency, or instrumentality must be sufficiently highly placed within his or her organization to demonstrate that the senior leadership of the requesting department, agency, or instrumentality supports the request for approval and is committed to taking all necessary steps to minimize operational risks to the proposed flights. The senior official must also be in a position to: (1) attest to the accuracy of all representations made to the FAA in the request for approval and (2) ensure that any support from the requesting U.S. Government department, agency, or instrumentality described in the request for approval is in fact brought to bear and is maintained over time. Unless justified by exigent circumstances, requests for approval must be submitted to the FAA no less than 30 calendar days

before the date on which the requesting department, agency, or instrumentality wishes the proposed operations, if approved by the FAA, to commence.

The letter must be sent by the requesting department, agency, or instrumentality to the Associate Administrator for Aviation Safety (AVS-1), Federal Aviation Administration, 800 Independence Avenue SW, Washington, DC 20591. Electronic submissions are acceptable, and the requesting entity may request that the FAA notify it electronically as to whether the approval request is granted. If a requestor wishes to make an electronic submission to the FAA, the requestor should contact the Air Transportation Division, Flight Standards Service, at (202) 267-8166 to obtain the appropriate email address. A single letter may request approval from the FAA for multiple persons covered under SFAR No. 114, 14 CFR 91.1609, and/or for multiple flight operations. To the extent known, the letter must identify the person(s) covered under the SFAR on whose behalf the U.S. Government department, agency, or instrumentality is seeking FAA approval, and it must describe—

- The proposed operation(s), including the nature of the mission being supported;
- The service to be provided by the person(s) covered by the SFAR;
- To the extent known, the specific locations in the Damascus (OSTT) FIR where the proposed operation(s) will be conducted, including, but not limited to, the flight path and altitude of the aircraft while it is operating in the Damascus (OSTT) FIR and the airports, airfields and/or landing zones at which the aircraft will take-off and land; and
- The method by which the department, agency, or instrumentality will provide, or how the operator will otherwise obtain, current threat information and an explanation of how the operator will integrate this information into all phases of the proposed operations (e.g., pre-mission planning and briefing, in-flight, and post-flight).

The request for approval must also include a list of operators with whom the U.S. Government department, agency, or instrumentality requesting FAA approval has a current contract(s), grant(s), or cooperative agreement(s) (or with whom its prime contractor has a subcontract(s)) for specific flight operations in the Damascus (OSTT) FIR. Additional operators may be identified to the FAA at any time after the FAA approval is issued. However, all additional operators must be identified to, and obtain an Operations Specification (OpSpec) or Letter of Authorization (LOA), as appropriate, from the FAA for operations in the Damascus (OSTT) FIR before such operators commence such operations. The revised approval conditions discussed below will apply to any such additional operators. Updated lists should be sent to the email address to be obtained from the Air Transportation Division by calling (202) 267-8166.

If an approval request includes classified information, requestors may contact Aviation Safety Inspectors Michael Filippell or Will Gonzalez for instructions on submitting it to the FAA. Their contact information is listed in the For Further Information Contact section of this final rule.

FAA approval of an operation under SFAR No. 114, 14 CFR 91.1609, does not relieve persons subject to this SFAR of their responsibility to comply with all applicable FAA rules and regulations. Operators of civil aircraft must also comply with the conditions of their certificate, OpSpecs, and LOAs, as applicable. Operators must further comply with all rules and regulations of other U.S. Government departments and agencies that may apply to the proposed operation(s), including, but not limited to, the Transportation Security Regulations issued by the Transportation Security Administration, Department of Homeland Security.

Approval Conditions

If the FAA approves the request, the FAA's Aviation Safety Organization (AVS) will send an approval letter to the requesting department, agency, or instrumentality informing it that the FAA's approval is subject to all of the following conditions:

(1) The approval will stipulate those procedures and conditions that limit, to the greatest degree possible, the risk to the operator, while still allowing the operator to achieve its operational objectives.

(2) Before any approval takes effect, the operator must submit to the FAA:

(a) A written release of the U.S. Government from all damages, claims, and liabilities, including without limitation legal fees and expenses; and

(b) the operator's agreement to indemnify the U.S. Government with respect to any and all third-party damages, claims, and liabilities, including without limitation legal fees and expenses, relating to any event arising from or related to the approved operations in the Damascus (OSTT) FIR.

(3) Other conditions that the FAA may specify, including those that may be imposed in OpSpecs or LOAs, as applicable.

The release and agreement to indemnify do not preclude an operator from raising a claim under an applicable non-premium war risk insurance policy issued by the FAA under chapter 443 of title 49, United States Code.

If the proposed operations are approved, the FAA will issue an OpSpec or a LOA, as applicable, to the operator(s) identified in the department's, agency's or instrumentality's request authorizing the operator(s) to conduct such operations, and will notify the department, agency, or instrumentality that requested the FAA's approval of any additional conditions beyond those

contained in the approval letter. The requesting department, agency, or instrumentality must have a contract, grant, or cooperative agreement (or its prime contractor must have a subcontract) with the person(s) described in paragraph (a) of this SFAR No. 114, 14 CFR 91.1609, on whose behalf the department, agency, or instrumentality requests FAA approval.

V. Petitions for Exemption

Any operations not conducted under an approval issued by the FAA in accordance with this SFAR No. 114, 14 CFR 91.1609, must be conducted under an exemption from SFAR No. 114, 14 CFR 91.1609. A request by any person covered under SFAR No. 114, 14 CFR 91.1609, for an exemption must comply with 14 CFR part 11, and will require exceptional circumstances beyond those contemplated by the approval process. In addition to the information required by 14 CFR 11.81, at a minimum, the requestor must describe in its submission to the FAA—

- The proposed operation(s), including the nature of the operation;
- The service to be provided by the person(s) covered by the SFAR;
- The specific locations in the Damascus (OSTT) FIR where the proposed operation(s) will be conducted, including, but not limited to, the flight path and altitude of the aircraft while it is operating in the Damascus (OSTT) FIR and the airports, airfields and/or landing zones at which the aircraft will take-off and land; and
- The method by which the operator will obtain current threat information, and an explanation of how the operator will integrate this information into all phases of its proposed operations (e.g., the pre-mission planning and briefing, in-flight, and post-flight phases).

Additionally, the release and agreement to indemnify, as referred to previously, will be required as a condition of any exemption that may be issued under SFAR No. 114, 14 CFR 91.1609.

The FAA recognizes that operations that may be affected by SFAR No. 114, 14 CFR 91.1609, may be planned for the governments of other countries with the support of the U.S. Government. While these operations will not be permitted through the approval process, the FAA will process exemption requests for such operations on an expedited basis and prior to any private exemption requests.

VI. Regulatory Notices and Analyses

Changes to Federal regulations must undergo several economic analyses. First, Executive Orders 12866 and 13563 direct that each Federal agency shall propose or adopt a regulation only upon a reasoned determination that the benefits of the intended regulation justify its costs. Second, the Regulatory Flexibility Act of 1980 (Pub. L. 96-354), as codified in 5 U.S.C. 603 *et seq.*, requires agencies to analyze the economic impact of regulatory changes on small entities. Third, the Trade Agreements Act (Pub. L. 96-39), as amended, 19 U.S.C. Chapter 13, prohibits agencies from setting standards that create unnecessary obstacles to the foreign commerce of the United States. In developing U.S. standards, the Trade Agreements Act requires agencies to consider international standards and, where appropriate, that they be the basis of U.S. standards. Fourth, the Unfunded Mandates Reform Act of 1995 (Pub. L. 104-4), as codified in 2 U.S.C. Chapter 25, requires agencies to prepare a written assessment of the costs, benefits, and other effects of proposed or final rules that include a Federal mandate likely to result in the expenditure by State, local, or tribal governments, in the aggregate, or by the private sector, of

\$100 million or more annually (adjusted for inflation with base year of 1995). This portion of the preamble summarizes the FAA's analysis of the economic impacts of this final rule.

In conducting these analyses, FAA has determined this final rule has benefits that justify its costs. This rule is a significant regulatory action as defined in section 3(f) of Executive Order 12866, as it raises novel policy issues contemplated under that Executive Order; further, this rule is "significant" as defined in DOT's Regulatory Policies and Procedures. This rule will not have a significant economic impact on a substantial number of small entities. This rule will not create unnecessary obstacles to the foreign commerce of the United States. This rule will not impose an unfunded mandate on State, local, or tribal governments, or on the private sector by exceeding the threshold identified above.

A. Regulatory Evaluation

Department of Transportation (DOT) Order 2100.5 prescribes policies and procedures for simplification, analysis, and review of regulations. If the expected cost impact is so minimal that a proposed or final rule does not warrant a full evaluation, this order permits a statement to that effect and the basis for it to be included in the preamble if a full regulatory evaluation of the costs and benefits is not prepared. Such a determination has been made for this final rule. The reasoning for this determination follows.

For SFAR No. 114, 14 CFR 91.1609, the FAA determined that incremental costs were minimal for U.S. operators of large transport category airplanes (four part 121 operators and two part 125M operators), because they had voluntarily ended their overflights in March 2011, before the FAA's August 18, 2014, issuance of FDC NOTAM 4/4936, which prohibited U.S. operators and airmen from flying in the Damascus (OSTT) FIR. The FAA also determined that the

incremental costs of SFAR No. 114 were minimal for about 15 “on-demand” large carriers (part 121 and part 121/135) and about 75 small “on-demand” operators (parts 135, 125, 125M, and 91K). These operators had previously flown into and out of Syria or conducted overflights in the Damascus (OSTT) FIR. However, because of sanctions imposed by the U.S. Department of the Treasury’s Office of Foreign Assets Control (OFAC) and the ongoing conflict, the FAA believed that few, if any, of these “on-demand” operators were still operating in the OSTT FIR immediately before the FAA issued FDC NOTAM 4/4936.

Due to significant and increased hostilities, and because the OFAC sanctions remain in place, the reasons for the FAA’s previous finding of minimal cost for SFAR No. 114, 14 CFR 91.1609, remain unchanged. Therefore, the FAA finds that the incremental cost of reissuing SFAR No. 114, 14 CFR 91.1609 will be minimal.

B. Regulatory Flexibility Analysis

The Regulatory Flexibility Act of 1980 (Pub. L. 96-354, “RFA”), 5 U.S.C. 601 *et seq.*, establishes “as a principle of regulatory issuance that agencies shall endeavor, consistent with the objectives of the rule and of applicable statutes, to fit regulatory and informational requirements to the scale of the businesses, organizations, and governmental jurisdictions subject to regulation. To achieve this principle, agencies are required to solicit and consider flexible regulatory proposals and to explain the rationale for their actions to assure that such proposals are given serious consideration.” The RFA covers a wide-range of small entities, including small businesses, not-for-profit organizations, and small governmental jurisdictions.

Agencies must perform a review to determine whether a rule will have a significant economic impact on a substantial number of small entities. If the agency determines that it will,

the agency must prepare a regulatory flexibility analysis as described in the RFA. However, if an agency determines that a rule is not expected to have a significant economic impact on a substantial number of small entities, section 605(b) of the RFA provides that the head of the agency may so certify and a regulatory flexibility analysis will not be required. The certification must include a statement providing the factual basis for this determination, and the reasoning should be clear.

Prior to the hostilities leading to the earlier published SFAR No. 114, 14 CFR 91.1609, there were many small entities conducting operations through the Damascus (OSTT) FIR. After the FAA initially published SFAR No. 114, 14 CFR 91.1609, the FAA received no requests for approval or petitions for exemption to allow persons subject to the SFAR to conduct flight operations in the Damascus (OSTT) FIR. Given no requests have occurred, the FAA believes the earlier determination of minimal cost is accurate. Thus reissuing the flight prohibition will not impose a significant economic impact. Therefore, as provided in section 605(b), the head of the FAA certifies that this rulemaking will not result in a significant economic impact on a substantial number of small entities.

C. International Trade Impact Assessment

The Trade Agreements Act of 1979 (Public Law 96-39), as amended, prohibits Federal agencies from establishing standards or engaging in related activities that create unnecessary obstacles to the foreign commerce of the United States. Pursuant to this Act, the establishment of standards is not considered an unnecessary obstacle to the foreign commerce of the United States, so long as the standard has a legitimate domestic objective, such as the protection of safety, and does not operate in a manner that excludes imports that meet this objective. The

statute also requires consideration of international standards and, where appropriate, that they be the basis for U.S. standards.

The FAA has assessed the effect of this final rule and determined that its purpose is to protect the safety of U.S. civil aviation from hazards outside the U.S. Therefore, the rule is in compliance with the Trade Agreements Act.

D. Unfunded Mandates Assessment

Title II of the Unfunded Mandates Reform Act of 1995 (Pub. L. 104-4) requires each Federal agency to prepare a written statement assessing the effects of any Federal mandate in a proposed or final agency rule that may result in an expenditure of \$100 million or more (in 1995 dollars) in any one year by State, local, and tribal governments, in the aggregate, or by the private sector; such a mandate is deemed to be a “significant regulatory action.” The FAA currently uses an inflation-adjusted value of \$155.0 million in lieu of \$100 million.

This final rule does not contain such a mandate. Therefore, the requirements of Title II of the Act do not apply.

E. Paperwork Reduction Act

The Paperwork Reduction Act of 1995 (Pub. L. 104-13) requires that the FAA consider the impact of paperwork and other information collection burdens imposed on the public. The FAA has determined that there is no new requirement for information collection associated with this final rule.

F. International Compatibility and Cooperation

In keeping with U.S. obligations under the Convention on International Civil Aviation, it is FAA policy to conform to International Civil Aviation Organization (ICAO) Standards and Recommended Practices to the maximum extent practicable. The FAA has determined that there are no ICAO Standards and Recommended Practices that correspond to this regulation.

While the FAA's flight prohibition does not apply to foreign air carriers, DOT codeshare authorizations prohibit foreign air carriers from carrying a U.S. codeshare partner's code on a flight segment that operates in airspace for which the FAA has issued a flight prohibition. Further, following the downing of Malaysia Airlines Flight 17, there is increased attention in the international community and ICAO to conflict-related threats to civil aircraft. Foreign air carriers and other foreign operators may choose to avoid, or be advised/directed by their civil aviation authorities to avoid, airspace for which the FAA has issued a flight prohibition.

G. Environmental Analysis

The FAA has analyzed this action under Executive Order 12114, Environmental Effects Abroad of Major Federal Actions (44 FR 1957, January 4, 1979), and DOT Order 5610.1C, Paragraph 16. Executive Order 12114 requires the FAA to be informed of environmental considerations and take those considerations into account when making decisions on major Federal actions that could have environmental impacts anywhere beyond the borders of the United States. The FAA has determined that this action is exempt pursuant to Section 2-5(a)(i) of Executive Order 12114, because it does not have the potential for a significant effect on the environment outside the United States.

In accordance with FAA Order 1050.1F, “Environmental Impacts: Policies and Procedures,” paragraph 8-6(c), FAA has prepared a memorandum for the record stating the reason for this determination, which has been placed in the docket for this rulemaking.

VII. Executive Order Determinations

A. Executive Order 13132, Federalism

The FAA has analyzed this final rule under the principles and criteria of Executive Order 13132, Federalism. The agency has determined that this action will not have a substantial direct effect on the States, or the relationship between the Federal Government and the States, or on the distribution of power and responsibilities among the various levels of government, and, therefore, does not have Federalism implications.

B. Executive Order 13211, Regulations that Significantly Affect Energy Supply, Distribution, or Use

The FAA analyzed this immediately adopted final rule under Executive Order 13211, “Actions Concerning Regulations that Significantly Affect Energy Supply, Distribution, or Use” (May 18, 2001). The agency has determined that it is not a “significant energy action” under the executive order, and it is not likely to have a significant adverse effect on the supply, distribution, or use of energy.

C. Executive Order 13609, Promoting International Regulatory Cooperation

Executive Order 13609, Promoting International Regulatory Cooperation, (77 FR 26413, May 4, 2012) promotes international regulatory cooperation to meet shared challenges involving health, safety, labor, security, environmental, and other issues and to reduce, eliminate, or

prevent unnecessary differences in regulatory requirements. The FAA has analyzed this action under the policies and agency responsibilities of Executive Order 13609, and has determined that this action would have no effect on international regulatory cooperation.

D. Executive Order 13771, Reducing Regulation and Controlling Regulatory Costs

This rule is not subject to the requirements of EO 13771 (82 FR 9339, February 3, 2017) because it is issued with respect to a national security function of the United States.

VIII. Additional Information

A. Availability of Rulemaking Documents

An electronic copy of a rulemaking document may be obtained by using the Internet—

- Searching the Federal eRulemaking Portal (<http://www.regulations.gov>);
- Visiting the FAA’s Regulations and Policies web page at http://www.faa.gov/regulations_policies or
- Accessing the Government Publishing Office’s web page at <http://www.fdsys.gov>

Copies may also be obtained by sending a request (identified by docket or amendment number of the rule) to the Federal Aviation Administration, Office of Rulemaking, ARM-1, 800 Independence Avenue SW, Washington, DC 20591, or by calling (202) 267-9677.

Except for classified material, all documents the FAA considered in developing this rule, including economic analyses and technical reports, may be accessed from the Internet through the Federal eRulemaking Portal referenced above.

B. Small Business Regulatory Enforcement Fairness Act

The Small Business Regulatory Enforcement Fairness Act of 1996 (SBREFA) requires FAA to comply with small entity requests for information or advice about compliance with statutes and regulations within its jurisdiction. A small entity with questions regarding this document may contact its local FAA official, or the person listed under the “For Further Information Contact” section at the beginning of the preamble. You can find out more about SBREFA on the Internet at: http://www.faa.gov/regulations_policies/rulemaking/sbre_act/.

List of Subjects in 14 CFR Part 91

Air traffic control, Aircraft, Airmen, Airports, Aviation safety, Freight, Syria.

The Amendment

In consideration of the foregoing, the Federal Aviation Administration amends chapter I of Title 14, Code of Federal Regulations, as follows:

PART 91-GENERAL OPERATING AND FLIGHT RULES

1. The authority citation for part 91 continues to read as follows:

Authority: 49 U.S.C. 106(f), 106(g), 1155, 40101, 40103, 40105, 40113, 40120, 44101, 44111, 44701, 44704, 44709, 44711, 44712, 44715, 44716, 44717, 44722, 46306, 46315, 46316, 46504, 46506–46507, 47122, 47508, 47528–47531, 47534, Pub. L. 114-190, 130 Stat. 615 (49 U.S.C. 44703 note); articles 12 and 29 of the Convention on International Civil Aviation (61 Stat. 1180), (126 Stat. 11).

2. In part 91, subpart M, add § 91.1609 to read as follows:

§ 91.1609 Special Federal Aviation Regulation No. 114 —Prohibition Against Certain Flights in the Damascus (OSTT) Flight Information Region (FIR).

- (a) *Applicability.* This section applies to the following persons:

(1) All U.S. air carriers and U.S. commercial operators;

(2) All persons exercising the privileges of an airman certificate issued by the FAA, except such persons operating U.S.-registered aircraft for a foreign air carrier; and

(3) All operators of civil aircraft registered in the United States, except where the operator of such aircraft is a foreign air carrier.

(b) *Flight prohibition.* No person may conduct flight operations in the Damascus (OSTT) Flight Information Region (FIR), except as provided in paragraphs (c) and (d) of this section.

(c) *Permitted operations.* This section does not prohibit persons described in paragraph (a) from conducting flight operations in the Damascus (OSTT) FIR, provided that such flight operations are conducted under a contract, grant, or cooperative agreement with a department, agency, or instrumentality of the U.S. government (or under a subcontract between the prime contractor of the department, agency, or instrumentality, and the person described in paragraph (a)), with the approval of the FAA, or under an exemption issued by the FAA. The FAA will process requests for approval or exemption in a timely manner, with the order of preference being: first, for those operations in support of U.S. government-sponsored activities; second, for those operations in support of government-sponsored activities of a foreign country with the support of a U.S. government department, agency, or instrumentality; and third, for all other operations.

(d) *Emergency situations.* In an emergency that requires immediate decision and action for the safety of the flight, the pilot in command of an aircraft may deviate from this section to the extent required by that emergency. Except for U.S. air carriers and commercial operators that are subject to the requirements of part 119, 121, 125, or 135 of this chapter, each person who

deviates from this section must, within 10 days of the deviation, excluding Saturdays, Sundays, and Federal holidays, submit to the nearest FAA Flight Standards District Office (FSDO) a complete report of the operations of the aircraft involved in the deviation, including a description of the deviation and the reasons for it.

(e) *Expiration.* This SFAR will remain in effect until December 30, 2018. The FAA may amend, rescind, or extend this SFAR No. 114, § 91.1609, as necessary.

Issued under authority provided by 49 U.S.C. 106(f) and (g), 40101(d)(1), 40105(b)(1)(A), and 44701(a)(5), in Washington, DC, on August 14, 2017.

Michael P. Huerta

Administrator

[FR Doc. 2017-18322 Filed: 8/28/2017 8:45 am; Publication Date: 8/29/2017]